

## Department of Education

## § 3485.611

agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

### Subpart D—Responsibilities of the Department's Officials Regarding Transactions

#### § 3485.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as a Federal agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 3485.137.

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

#### § 3485.437 What method do I use to communicate to a participant the requirements described in § 180.435 of this title?

To communicate the requirements in this part to a participant, you must include a term or condition in the transaction that requires the participant's compliance with part 180, subpart C, of this title, as adopted at § 3485.12 and requires the participant to include a similar term or condition in lower-tier covered transactions.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and 3474)

### Subpart E [Reserved]

### Subpart F—General Principles Relating to Suspension and Debarment Actions

#### § 3485.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in § 180.715 of this title.

(2) Instead of the procedures in §§ 180.720 through 180.760 of this title, the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause for suspension as explained in § 180.700 of this title.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in §§ 180.805 and 180.870 of this title.

(2) Instead of the procedures in §§ 180.810 through 180.885 of this title,

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the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debar-  
ring a title IV, HEA participant, we  
issue a final decision after we receive  
any written materials from the parties.

(4) In addition to the findings and  
conclusions required by 34 CFR part  
668, subpart G, or 34 CFR part 682, sub-  
part D or G, the debarring official, and,  
on appeal, the Secretary determines  
whether there is sufficient cause for de-  
barment as explained in § 180.800 of this  
title.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.  
189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec.  
2455, Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C.  
6101 note); 20 U.S.C. 1082, 1094, 1221e-3, and  
3474)

### **§ 3485.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?**

(a) If a title IV, HEA participant is  
debarred by another agency under E.O.  
12549, using procedures described in  
paragraph (d) of this section, that  
party is not eligible to enter into title  
IV, HEA transactions for the duration  
of the debarment.

(b)(1) If a title IV, HEA participant is  
suspended by another agency under  
E.O. 12549 or under a proposed debar-  
ment under the Federal Acquisition  
Regulation (FAR) (48 CFR part 9, sub-  
part 9.4), using procedures described in  
paragraph (d) of this section, that  
party is not eligible to enter into title  
IV, HEA transactions for the duration  
of the suspension.

(2)(i) The suspension of title IV, HEA  
eligibility as a result of suspension by  
another agency lasts for at least 60  
days.

(ii) If the excluded party does not ob-  
ject to the suspension, the 60-day pe-  
riod begins on the 35th day after that  
agency issues the notice of suspension.

(iii) If the excluded party objects to  
the suspension, the 60-day period be-  
gins on the date of the decision of the  
suspending official.

(3) The suspension of title IV, HEA  
eligibility does not end on the 60th day  
if—

(i) The excluded party agrees to an  
extension; or

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(ii) Before the 60th day we begin a  
limitation or termination proceeding  
against the excluded party under 34  
CFR part 668, subpart G, or part 682,  
subpart D or G.

(c)(1) If a title IV, HEA participant is  
debarred or suspended by another Fed-  
eral agency—

(i) We notify the participant whether  
the debarment or suspension prohibits  
participation in title IV, HEA trans-  
actions; and

(ii) If participation is prohibited, we  
state the effective date and duration of  
the prohibition.

(2) If a debarment or suspension by  
another agency prohibits participation  
in title IV, HEA transactions, that pro-  
hibition takes effect 20 days after we  
mail notice of our action.

(3) If the Department or another Fed-  
eral agency suspends a title IV, HEA  
participant, we determine whether  
grounds exist for an emergency action  
against the participant under 34 CFR  
part 668, subpart G, or part 682, subpart  
D or G, as applicable.

(4) We use the procedures in § 3485.611  
to exclude a title IV, HEA participant  
excluded by another Federal agency  
using procedures that did not meet the  
standards in paragraph (d) of this sec-  
tion.

(d) If a title IV, HEA participant is  
excluded by another agency, we debar,  
terminate, or suspend the participant—  
as provided under this part, 34 CFR  
part 668, or 34 CFR part 682, as applica-  
ble—if that agency followed procedures  
that gave the excluded party—

(1) Notice of the proposed action;

(2) An opportunity to submit and  
have considered evidence and argument  
to oppose the proposed action;

(3) An opportunity to present its ob-  
jection at a hearing—

(i) At which the agency has the bur-  
den of persuasion by a preponderance  
of the evidence that there is cause for  
the exclusion; and

(ii) Conducted by an impartial person  
who does not also exercise prosecu-  
torial or investigative responsibilities  
with respect to the exclusion action;

(4) An opportunity to present witness  
testimony, unless the hearing official  
finds that there is no genuine dispute  
about a material fact;